



## Attorney General of New Mexico

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May 5, 2008

Gilbert Ferran, Interim President  
Merced Del Pueblo Abiquiu  
P.O. Box 179  
Abiquiu, NM 87510

Dear Mr. Ferran:

Thank you for responding to our request for information regarding the complaint Ms. Sarah Welsh filed with our office, alleging that the Abiquiu Land Grant improperly denied her request for meeting minutes of the Board of Trustees for the year 2007 under the Inspection of Public Records Act ("IPRA" or "Act"), NMSA 1978, §§ 14-2-1 through 14-2-12 (1947, as amended through 2005). We have reviewed Ms. Welsh's complaint, your March 16, 2008 response letter to this office, and the IPRA. For the reasons discussed below, it appears that Merced Del Pueblo violated IPRA, as alleged in the complaint.

Under the IPRA, "A citizen has a fundamental right to have access to public records." See State ex. rel. Newsome v. Alarid, 90 N.M. 790, 797 (1977). Therefore, in determining whether an IPRA violation has occurred this office starts out with the presumption of access to public records in most cases.

The IPRA applies to "public bodies," which it defines as "executive, legislative and judicial branches of state and local governments and all advisory boards, commissions, committees, agencies or entities created by the constitution or any branch of government that receives any public funding, including political subdivisions, special taxing districts, school districts and institutions of higher education." See NMSA 1978, § 14-2-6(D). The Merced del Pueblo Abiquiu contends that it is not a political subdivision (or "public body") of the state until its new bylaws are completed and sent to the Secretary of State.

The political status of the Merced is determined by statute. NMSA 1978, Section 49-1-1 (2004) states "All land grants-mercedes in the state or land grants-mercedes described in

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Section 49-1-2 NMSA 1978 shall be managed, controlled and governed by their bylaws, by the Treaty of Guadalupe Hidalgo and as provided in Sections 49-1-1 through 49-1-18 NMSA 1978 as political subdivisions of the state.” This section is applicable to land grants-mercedes confirmed by the court of private land claims. See NMSA 1978, § 49-1-2(A). The Abiquiu Land Grant was confirmed by the Court of Private Land Claims in 1894. Therefore, the Abiquiu Land Grant is subject to the provisions of Chapter 49 of the New Mexico Statutes.

The phrase “as political subdivision of the state” was added to the statute by the 2004 amendments. According to Fiscal Impact Report prepared by the New Mexico Legislative Finance Committee on the proposed language: “The bill establishes community land grants as political subdivisions of the state which more clearly establishes land grants as state actors subject to constitutional and statutory limitations and duties.” See N.M. Leg. Fin. Comm., Fiscal Impact Report, S.B. 142, Reg. Sess. (2004). The wording of Section 49-1-1 does not imply that the passage of bylaws is a condition precedent to being considered a political subdivision. Rather it plainly states that the land grants will be governed by their own bylaws. Their status as political subdivisions of the state is not in question. The word “shall” shows that once created the land grant is a political subdivision of the state. This fact is reinforced by the aforementioned legislative history.

Therefore, the Abiquiu Land Grant has been a political subdivision of the state *at least* since July 1, 2004 (the effective date of the amendment to Section 49-1-2). Records from 2007 are most certainly subject to inspection under IPRA. Therefore, it is our conclusion that the Abiquiu Land Grant violated the Inspection of Public Records Act.

To bring the Merced de Abiquiu Land Grant in compliance with the IPRA, we ask that you produce the minutes for each meeting of the Board of Trustees held during 2007. You have stated that as a result of the departure of the previous President of the Merced, Delvin Garcia, you have had difficulty recovering all the Board’s records from him. Therefore, we ask that you make a good faith effort to obtain those documents that are in his possession so that you can provide Ms. Welsh access to those documents as soon as possible.

Very Truly Yours,



Stephen A. Vigil  
Assistant Attorney General  
Civil Division

cc: Albert J. Lama, Chief Deputy Attorney General  
Elizabeth Glenn, Assistant Attorney General, Director Civil Division  
Ms. Sarah Welsh